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CASE DOCKETS OF FAR EAST WAR CRIMES TRIALS

RECORD GROUP 153

ENTRY 1021

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HEADQUARTERS EIGHTH ARMY
United States Army
Office of the Staff Judge Advocate

Doc. No. 46
Yokohama, Japan
17 August, 1946

UNITED STATES OF AMERICA VS GENJI MINENO

Review of the Staff Judge Advocate

1. The attached record of trial of Genji Minemo at Yokohama, Japan, from 25 June 1946 to 28 June 1946, by a Military Commission appointed by paragraph 1, Special Orders No. 161, Headquarters Eighth Army, United States Army, dated 22 June 1946, having been referred to the Staff Judge Advocate this review is submitted to the Commanding General.

Personal Data Concerning Accused

NAME:	Genji Mineno
AGE:	Twenty-nine (29)
RESIDENCE:	No. 3259 Azakubabata, Nagayu-mura Nooiri-gun, Ohita Prefecture.
MARITAL STATUS:	Not shown
RELATIVES:	Not shown
EDUCATION:	Higher grammar school
VOCATION:	Guard at Prisoner of War Camp.
MILITARY CAREER:	Japanese Imperial Army from 20 August 1939 to 30 July 1940.

2. Synopsis of Charges, Pleas, Findings, Legal Sufficiency and Sentence:

<u>Charge and Specifications</u>	<u>Pleas</u>	<u>Findings</u>	<u>Legally Sustained</u>
Charge: Between 1 February 1943 and 1 September, 1945, at PW Camp No. 3, Kyushu, Japan, accused, then a civilian guard serving with the armed forces of Japan, did willfully and unlawfully, commit cruel, inhuman and brutal acts, atrocities and other offenses against certain American and Allied PW's, in violation of the Laws and Customs of War.	NG	G	Yes
Sp 1 : In or about February 1943, accused with others, did willfully and unlawfully brutally mistreat and torture John Scott Painter, an American PW, by beating him about the head with a rifle and by a tripping him of clothing and forcing him to stand in a tank of cold water.	NG	G	Yes
Sp 2 : On several occasions between 1 February 1943 and 30 March 1944, the accused, willfully and unlawfully, brutally mistreated and tortured George De Witt Stoddard an American PW, by beating him and by inserting splivers of wood under his finger nails and burning them.	NG	G	Yes

Sp 3 : In or about March 1943, accused with others, willfully and unlawfully, brutally mistreated and tortured Victor Brown, an American PW, by repeatedly beating him with a stick and rifle and by throwing him into a water trough.	NO	G	Yes
Sp 4 : On or about 5 July 1943, accused with others, willfully and unlawfully, brutally mistreated and abused George E. Gibson and John H. Burton, American PW's, by beating them with a club.	NO	NO	
Sp 5 : In or about August 1943, accused with others, willfully and unlawfully, brutally mistreated and tortured George De Witt Stoddard and William O. Cash American PW's, by strapping them to a stretcher and pouring water down their nostrils.	NO	G	Yes
Sp 6 : Between 19 October 1943 and 1 September 1945, accused, willfully and unlawfully, brutally mistreated and tortured Joseph Ardell Minton, an American PW, by beating him with a shoe and by forcing him to kneel in the snow without a coat for about one hour.	NO	G	Yes
Sp 7 : Between 1 February 1943 and 1 September 1945, accused, willfully and unlawfully, brutally mistreated and tortured Oscar Donald Jakobsen and other American PW's, by forcing them to slap each other in the face for an extended period of time, and by making them stand at attention for a long period of time holding a bar over their heads.	NO	G	Yes
Sp 8 : In or about May 1944, accused, willfully and unlawfully, brutally mistreated and beat Norman J. Berg, an American PW, by slapping him and beating him into unconsciousness with a club and, upon revival, again kicking him into unconsciousness.	NO	G	Yes
Sp 9 : On or about 15 May 1944, accused, willfully and unlawfully, brutally mistreated and tortured Thomas B. Armitage, William O. Cash and Munroe Dave Woodall, American PW's, by beating and kicking them, by forcing water into their mouths and noses and by pressing lighted cigarettes against their bodies.	NO	G	Yes
Sp 10: On or about 1 September 1944, Accused, willfully and unlawfully, brutally mistreated and tortured Luther Hadley MacKenzie and James R. Martin, American PW's, by beating and kicking them.	NO	G	Yes

Sp 11: That in or about January 1945 accused with others, willfully and unlawfully, brutally mistreated and tortured William O. Cash, an American PW, by fastening him on a stretcher head downward and then beating him with a club, by applying hot poker to his wrists and arms and by applying burning cigarettes to his face.

NG

NG

Sp 12: In the period between 1 February 1943 and 1 September 1945, accused, did willfully and unlawfully, abuse, mistreat, beat and torture various American and Allied PW's, other than in specific acts referred to in Specification 1 to 11, inclusive.

NG

G

Yes

Sentence Imposed: Confinement at hard labor for twenty (20) years.

Maximum Legal Punishment: Death.

3. Summary of Evidence:

a. For the Prosecution:

As to Specification 1: The accused was a civilian guard at prisoner of War Camp Number 3 at Kokura, Fukuoka, Japan, between 1 February 1943 and 1 September 1945. In February 1943 John S. Painter, an American prisoner at the camp, bought a can of pepper from a civilian outside of the camp. Upon return from a labor detail painter was searched and the pepper was discovered. Accused and two other civilian guards took him to the guard house, beat him with rifles, stripped him of his clothing, placed him in a tank of ice water up to his chin and beat him severely about the head (Ex 2).

As to Specification 2: On two or three occasions in 1943 and once in 1944, the accused put bamboo slivers under the fingernails of George Stoddard, an American prisoner at the camp, and ignited them. On each occasion he put the bamboo slivers under two or three fingernails. The heat caused great pain and resulted in his fingers becoming black and blue down as far as the first knuckle. Occasionally this caused the fingernail to come off. During the above torture a beating was administered Stoddard, usually with a bamboo club (Ex 3).

As to Specification 3: In or about March 1943 the accused and three other guards at the camp beat Victor Brown, an American internee, with bamboo sticks, rifle butts and rifle barrels. When he became unconscious they threw him into a water trough to revive him. This was repeated two more times when he was released and crawled about 175 feet back to his room (Ex 4).

As to Specification 5: In August, 1943, accused and two other Japanese guards strapped William O. Cash and George De Witt Stoddard, American prisoners, to stretchers and warm water was poured down their nostrils to such an extent that they nearly became unconscious (Ex 3).

As to Specification 6: Joseph A. Minton was an American prisoner at the camp from 19 October 1943. While there, accused beat Minton with a shoe. He likewise, forced him to kneel in the snow without a coat while it was snowing for the period of an hour (Ex 6).

As to Specification 7: Oscar D. Jakobsen, an American Prisoner at the camp, was the leader of a group of approximately fourteen prisoners. In December, 1942, Jakobsen was held to be responsible because some of the men of his group failed to clean ash trays properly. He, together with some other leaders, were

to face and slap each other for ten to fifteen minutes. On several other occasions accused forced Jakobsen and others to stand at attention and hold bars over their heads for ten to fifteen minutes because of some minor infractions of the rules (Ex 7).

As to Specification 8: In or about May, 1944, Norman J. Berg, an American internee, was sent to the kitchen to get tea for the Japanese commanding officer. On such occasions prisoners were instructed to use the Japanese language if possible. Berge complied with this rule and accused, as steward, claimed Berg used impolite Japanese. He forced Berg to assume the position of attention and slapped him for about ten minutes. Then he beat him into unconsciousness with a club of the approximate size of a pick handle. Upon Berg's regaining consciousness accused kicked him until again he lost consciousness. As a result of this treatment, Berg was out in numerous places about his face and body, was severely bruised and was confined to his bed for about two days (Ex 8).

As to Specification 9: About 15 May, 1943, some clothes were stolen at the camp. William Cash, Sergeant Woodall and Thomas B. Armitage, American prisoners, were beaten by the accused and others in order to try to find out where the clothes were. They were stretched out upon a ladder and were beaten with a club from the shoulders to the hips. They were knocked to the floor many times. Accused and others tied them to a stretcher, placed them head down and poured about two gallons of water from a pt pitcher in their nostrils until they lost consciousness. Upon reviving, they were beaten again and the water treatment was repeated. Lighted cigarettes were placed on the cuticles of their fingernails. These tortures and beatings continued for about six hours at which time they were returned to their barracks, but about fifteen minutes later they took them back and beat them again for another hours. Woodall was hospitalized for four days as a result of this treatment (Ex. 9) and (Ex. 10 as to corroboration of the incident only Ex. 11).

As to Specification 10: On or about 1 September, 1944, Corporal James R. Martin was discovered smoking at a time when it was forbidden. Sergeant Luther H. MacKenzie was the leader in charge of Martin. Both prisoners were taken to the guard house by accused where Martin was beaten with a club and kicked viciously. His eye was forced closed, the flesh on his body was bruised and he received a cut on his head as a result of this treatment. MacKenzie was also beaten and kicked by accused until his entire body became bruised (Ex 12).

As to Specification 12: The evidence supporting this specification is copious. Accused beat prisoners almost every day he was on duty. Two or three prisoners were beaten in the guard house every night. Prisoners were beaten with clubs until they became unconscious and until their backs were masses of inflamed, bleeding flesh. They were beaten by accused for such trifling offenses as smoking at forbidden times, failure to clean their shoes and neglecting to fold their blankets properly (Exs. 6,7,12,14,15,16).

b. For the Defense: Lieutenant Colonel Urata, a witness for the defense, testified that he was camp commander and accused was a civilian guard there. During that time he did not hear of prisoners being thrown in water tanks, nor did he see or hear of any prisoners being beaten (R 17-25).

The Defense next called Seizo Hagakura, a former guard at the camp. He testified that he did not see accused strike any prisoners of war, throw them into a pool of water, or put bamboo splinters under their fingernails. He did not know whether accused was present at the beating and mistreatment of Cash and Woodall. Only Cash was given the water treatment and none of them was burned nor had his knees twisted out of the socket (R.25-32)

Yukio Asono, a witness for the defense, was sworn and testified that he was an interpreter at the camp. He saw Cash and Armitage beaten. He thought it happened in the summer of 1944. He did not see accused there at the beating. Yamauchi, not the accused, beat Berg. He did not see or hear of incidents where accused put splinters under the fingernails of prisoners, but heard rumors that such things were done at the camp (R 32-37).

Accused elected to take the stand as a witness in his own behalf and, having been sworn, testified that he did not go to work at the camp until 20 March 1943. He did not know prisoners by the names of Painter, Stoddard, Brown, Minton, Jakobsen, Berg, MacKenzie, or Martin. He denied beating prisoners of war, hitting them with rifles, forcing them to stand in cold water while stripped, placing bamboo splinters under their fingernails and burning them, giving any prisoners the water treatment, forcing prisoners to slap each other, forcing a prisoner to hold a bar over his head for a long period of time, or beating a prisoner with a shoe. He once saw guards placing a prisoner on a stretcher but saw no one beaten at the time. He did not see water being forced down anyone's nose, nor anyone being burned with cigarettes. He carried a small sabre while on duty but did not use it as a weapon to beat a prisoner. He admitted making a prisoner stand at attention for fifteen minutes for stealing army clothes (R 48-48).

c. Rebuttal - Prosecution:

Hiroishi Nishi, a witness for the prosecution, testified that he was an interpreter for prisoners who were working at the Yawata Steel Works. Accused's nickname was "Water Snake". He heard prisoners complain about beatings that were going on at the camp. He heard them say that the accused was one of the perpetrators of the beatings. He heard that Cash was beaten but did not know who beat him (R 60-66).

4. Opinion:

The record is legally sufficient to support the findings of the commission. The commission was constituted by proper authority and had jurisdiction of the accused and of the offenses.

The Prosecution introduced testimony by means of sworn statements of prisoners who had been interned at the camp and were in a position to know the facts of the matters in issue. From such testimony the guilt of the accused was firmly established.

The accused entered a vigorous denial of the offenses alleged against him under the charge and specifications. Witnesses testified in his behalf tending to prove that he was innocent of the charge and specifications alleged against him. However, the commission, in weighing and evaluating all of the evidence presented by both sides, found in favor of the prosecution on all but two specifications.

The defense objection to the introduction into evidence of the official communications between the United States Government and the Japanese Government, by telegraph through the Swiss Government, was properly overruled. This is the usual manner of exchange of diplomatic messages between warring states in prisoner of war matters. The evidence was relevant. The form of the agreement is immaterial. Briggs, The Law of Nations: Cases, Documents and Notes P. 406411. The fact that prior authorization by the governments of the diplomatic messages involved was not shown does not invalidate them. The governments themselves have never denied the authenticity of the communications. This being the case, the official action of the Japanese Government in diplomatic matters bound every Japanese citizen. Under international law each government is bound to inform its citizens of the duties owed by it and them under international obligations. The permanent Court of International Justice in its

opinion in the Case relative to the exchange of Greek and Turkish Populations (1925) declared it to be a "self-evident" principle that "a State which had contracted valid international obligations is bound to make in its legislations such modifications as may be necessary to insure the fulfillment of the obligations undertaken". Publications of the P.C.I.J., Series B, No. 10, p 20. Briggs, The Law of Nations: Cases Documents and Notes P. 434.

The defense objection to the admission of ex parte affidavits was properly overruled. Such evidence is expressly admissible under paragraph 5 d (1) (c) SCAP Regulations Governing the Trials of Accused War Criminals, 5 December 1945. This SCAP rule is legal and in accordance with established practice in military commission trials. Application of Yamashita 66 S. Ct. 340; Ex parte Quirin 317 U. S. 1, 63 S. Ct. 2; Fairman, The Law of Martial Rule P. 276-277.

The law member made the following statement:

"The Commission will receive statements and affidavits, signed or unsigned. It doesn't have to have any basis, but it will be taken for what it is worth and considered by the commission" (R.40).

Although this statement had to do with the admission into evidence of a defense exhibit and did not, in any way, prejudice the case of the accused, in order to prevent the establishment of a precedent, it should be noted that the statement is erroneous. The SCAP rules are not to be construed to admit irrelevant matters into evidence. The evidence must have probative value in the mind of a reasonable man. Contrary to the ruling, there must be a basis. An unsigned statement must be identified in some way with the person making the statement.

The accused had a fair trial. He was ably represented by counsel, called witnesses to testify in his own behalf and took the stand himself. A careful scrutiny of the entire record fails to reveal any error which injuriously affected the substantial rights of the accused or any failure to accord him a fair trial in every respect. The evidence supports the findings. There is no evidence that the accused was not sane at the time the alleged acts were committed and at the time of trial.

5. Recommendations:

There are no letters of clemency from any members of the commission or from others.

The commission sentenced the accused to confinement at hard labor for twenty years. The sentence is legal.

In view of the sentence, which might have been more severe, clemency is not merited. Therefore, it is recommended that the sentence be approved. Sugamo Prison, Tokyo, Honshu, Japan, is the appropriate place of confinement.

6. Action: A form of action designed to carry this recommendation into effect is attached hereto.

/s/ Paul E. Spurlock
PAUL E. SPURLOCK
Reviewer

I CONCUR:

Judge Advocate Section

The affidavit of an Army Medical Major contradicts that of another prisoner of war as to the identity of the victim's assailant with respect to the facts

alleged in Specification 8. The least that can be said of the evidence as to this is that it does not sustain the allegations beyond a reasonable doubt. Nevertheless, the proof does support the sentence of twenty years confinement for conviction of the allegations of the remaining nine Specifications, in view of the ample proof of guilt of many cruel beatings and other tortures. Being completely inadequate, the sentence should not be reduced.

/s/ Allan R. Browne
ALLAN R. BROWNE
Lt. Col., JAGD
Army Judge Advocate

HEADQUARTERS EIGHTH ARMY
United States Army
APO 343

Yokohama, Japan
August 1946

In the foregoing case of Genji Mineno, the finding of guilty of Specification 8 is disapproved. Nevertheless, in view of the proof of the guilt of the accused of the many beatings and other vicious tortures charged in the nine specifications remaining, the sentence of twenty years should not be reduced. The sentence, therefore, though inadequate, is approved and will be duly executed. The Sugamo Prison, Tokyo, Honshu, Japan, or elsewhere as the Supreme Commander for the Allied Powers, or other proper authority, may direct, is designated as the place of confinement.

R. L. EICHELBERGER
Lieutenant General, U. S. Army
Commanding